IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2996 of 2007

Sidhu @ Sidharth Ramesh Jamejai — Applicant
Vs.
State of Maharashtra — Respondent

Ms.Sarojini Upadhyay, Advocate appointed for the applicant.

Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 11, 2007.

P.C.

1. Consequent to the order dated 20/9/2007 the learned Principal District and Sessions Judge at Thane has sent his report dated 1/10/2007 and the same is taken on record. It appears that Smt. N.V. Bhaid was the Special Judge under the provisions of the MCOC Act, 1999 and MCOC Case No.5 of 2004 in which the present applicant is an accused was before the said learned Judge for trial. Charge was framed on 27/1/2006 and recording of evidence had started on 1/2/2006. Twelve witnesses were examined and thereafter by notification dated 16/5/2007 the learned Sessions Judge was himself appointed as the Special Judge under the MCOC Act. The case was fixed for hearing before him on 26/6/2007 and no witness

was examined and on the next date i.e. on 13/7/2007 he was busy in inspection and the case was adjourned to 30/7/2007 on which date he was on leave. The case was taken up on 21/8/2007. The evidence of one of the prosecution witnesses was completed. The case was adjourned to 10/9/2007 on which date the I.O. was present but he was not examined and summons were served on the other witnesses. The case was subsequently adjourned to 6/10/2007.

2. The Registrar (Judicial) to inform the applicant regarding the progress of the trial as indicated in the report submitted by the learned Sessions Judge on 1/10/2007 at the jail address. The application stands disposed off.

3. Before parting with this case, I deem it appropriate to refer to the scheme of Section 309 of Cr.P.C. It states that in every enquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to

be necessary for reasons to be recorded in writing. After taking cognizance of the offence, if the Court finds it necessary to postpone the trial, it may, from time to time, for reasons to be recorded, adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, provided that when the witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing. In this regard I may refer to the decision in the case of Ambika Prasad and anr. vs. State (Delhi Admn. Delhi) **[AIR 2000 SC 718]** wherein the Supreme Court observed that the Sessions Judge ought to have followed the mandate of Section 309 of Cr.P.C. of completing the trial by examining the witnesses from day to day and even if the request for adjournment of the learned counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days. In the case of State of U.P. vs. Shambhu Nath Singh **[(2001) 4 SCC 667]** the Supreme Court once again considered the mandate of Section 309 of Cr.P.C. and the observations made therein have been reiterated subsequently by a three Judge Bench in the case of Mohd. Khalid vs. State of West Bengal **[(2002) 7 SCC**

334] and also referred to yet earlier decision in the case of N.G. Dastane vs. Shrikant Shivde **[(2001) 6 SCC 135]**.

4. In Shambhu Nath Singh's case (Supra) the Supreme Court stated, inter alia, as under:-

> ". Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.
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> . Now, we are distressed to note that it

is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.

. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to

attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such

directions."

. It is often noticed that the mandate of Section 309 of Cr.P.C. is not being followed by the trial courts and more particularly in the Sessions trials. This observance in breach of the requirements of Section 309 of Cr.P.C. may be one of the contributing factors for inordinate delays and high rate of acquittals. Hence it is imperative that the trial courts are reminded to follow meticulously the guide-lines laid down by the Supreme Court in the case of Shambhu Nath Singh (Supra) the mandate of Section 309 of Cr.P.C.

5. The Registrar (Judicial) is directed to take appropriate steps to issue a fresh circular by way of reminders to all the Sessions Courts, including the Ad-hoc/Fast Track Courts to follow the guide-lines set out by the Supreme Court in the case of Shambhu Nath Singh (Supra), on commencement of the trial.

(B.H.MARL